

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
MAY 26, 2009**

The regular meeting of the Greensboro Board of Adjustment was held on Tuesday, May 26, 2009 at 2:00 p.m. in the City Council Chamber of the Melvin Municipal Office Building. The following Board members were present: Chair John Cross, Russ Parmele, Clinton Turner, Rick Pinto, Scott Brewington, Ryan Shell, Bill Strickland. Staff present were Rawls Howard, Zoning Administrator, Loray Averett, Zoning Services Coordinator and Becky Jo Peterson-Buie, City Attorney's Office.

Chair Cross called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. Chair Cross also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

Rawls Howard and Counsel Buie-Peterson presented a handout to the Board members concerning some new case law and asked them to look it over at their leisure.

APPROVAL OF MINUTES

Chair Cross pointed out a spelling error on page 8 and stated that David "Stack" should be corrected to read David "Schenk." Mr. Pinto moved to approve the minutes of the April 27, 2009 minutes as corrected, seconded by Mr. Parmele. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Rawls Howard and Loray Averett were sworn in for their testimony related to matters listed on the agenda.

NEW BUSINESS

VARIANCE

- (a) **BOA-09-11: 1712 AFTONSHIRE DRIVE** Colleen Connor requests a variance from a minimum side setback requirement. *Violation: An existing single family dwelling encroaches one foot into a 10-foot side setback. Table 30-4-6-1, Present Zoning RS-12, BS-50, Cross Street-Pebble Drive. (GRANTED)*

Rawls Howard stated that the applicant is requesting a variance for an existing single family dwelling that encroaches one foot into a 10-foot side setback. The property is located on the eastern side of Aftonshire Drive east of Pebble Drive on zoning map block sheet 50. The property is currently zoned RS-12 (Residential Single Family, 12,000 square feet per lot). The adjacent properties are also zoned RS-12. Tax records indicate the house was built in 1970 and an addition was added in the year 2002. The Building Permit Division does not keep permit

records beyond 5 years. The lot is rectangular in shape and contains approximately 13,026 square feet. The lot has angled side lot lines. The addition encroaches slightly less than 1 foot into a 10-foot side setback. Based on the angle of the existing house and the angle of the side lot line, the addition foundation appears to have been located a few inches into the required 10 foot setback. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density on RS-12 will typically be 3.0 units per acre or less.

Colleen Connor, the applicant, was sworn in and started that she purchased the home in October 2008 and a survey was not done at that time. She was unaware that there was an issue with the side setback. The home is currently under contract and the survey identified that there was an issue. It looks to her as if the addition that was constructed on the home was misplaced causing the problem. The error is only a slight miscalculation and the property line is not perpendicular to the home. She is asking for a one-foot variance to cover the side setback requirement. She produced photographs of the site and a letter from the adjacent neighbor who is in support of the granting of a variance.

There was no one speaking in opposition to the request.

After a short discussion, Mr. Pinto moved that in BOA-09-11, 1712 Aftonshire Drive, that the findings as submitted by staff be incorporated into the record by reference and that the Zoning Enforcement Officer be overruled and the variance be granted as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, she can make no reasonable use of the property as this is a home that was purchase a little over a year ago and nothing was brought to the attention to the owners at that time that this violation existed. This is a violation that has been in place since 2002, and even though a building permit was approved and issued at that time. This is a minimal violation of 7" to 9" encroaching into the 10 foot side setback requirement and likely results from the fact that there are angled side lot lines, such that the beginning of the addition was not in violation. The hardship of which the applicant complains results from those unique circumstances and is not the result of the applicants' own actions. The variance is in harmony with the general purpose and intent of this ordinance and the granting of this variance does not appear to effect public safety in any substantial way, seconded by Mr. Brewington. The Board voted 6-1 in favor of the motion. (Ayes: Cross, Brewington, Pinto, Parmele, Shell, Turner. Nays: Strickland.)

- (b) BOA-09-12: 5608 GUIDA DRIVE Randy Kogutkiewicz requests a variance for an attached garage that will encroach into the rear setback. Violation: A proposed garage will encroach 8 feet into a 30-foot rear setback. Table 30-4-6-1, Present Zoning-RS-12, BS-164, Cross Street-Dolley Madison Road. (DENIED)**

Rawls Howard stated that the applicant is requesting a variance for an attached garage that will encroach 8 feet into a 30-foot rear setback. The property is located on the north side of Guida Drive north of Dolley Madison Road on zoning map block sheet 164. The property is currently zoned RS-12 (Residential Single Family, 12,000 square feet per lot). Tax records indicate the house was built in 1980. The Building Permit Division does not keep permit records beyond 5

years. The lot is rectangular in shape and contains approximately 13,000 square feet. The dwelling has an attached carport located at the back of the dwelling. The garage is proposed to be attached to the carport portion, not the house. There are multifamily dwellings located directly behind the applicant's rear property line. The properties are separated with a privacy fence.

The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density on RS-12 will typically be 3.0 units per acre or less.

Randy Kogutkiewicz, the applicant, was sworn in and stated that he has an existing outbuilding/utility building on his property and it is getting old and deteriorated and should be replaced. He would like to add an extension to the existing carport. When he purchased his property in 1990 he was aware that there was a 20 foot utility easement. His property backs up to the Brownstone Community, which is a retirement community and he has talked with the president of the association there and they have no problem with a garage addition on the rear of his existing carport. He was surprised to learn that there is a 30 foot setback on this property. He feels that the utility buildings detract from the property and if attached to the existing house it would look a lot better. If approved, he would only be using 8 feet of the 30-foot setback at the rear of the property.

There was no one speaking in opposition to the request.

In discussion, the Board members indicated that they did not feel that the proposed variance is in harmony with the ordinance and they could not support it. It was felt that the criteria for granting a variance could not be met, especially trying to find that the property owner could not make reasonable use of the property without the granting of the variance.

Mr. Strickland moved that in BOA-09-12, 5608 Guida Drive, that the findings as submitted by staff be incorporated into the record by reference and that the Zoning Enforcement Officer be upheld and the variance denied as if the applicant complies with the provisions of the ordinance he can make reasonable use of the property because there are other options, such as enclosing the carport. The hardship of which the applicant complains does not result from the unique circumstances related to the property because there are other options. The hardship does not result of the application of the ordinance to the property because there is nothing unique about the property and the hardship is the result of the applicant's own actions because there are other options. The variance is not in harmony with the general purpose and intent of the ordinance and does not preserve its spirit, again because there are other options available to the applicant, seconded by Mr. Pinto. The Board voted 7-0 in favor of the motion to deny the variance. (Ayes: Cross, Brewington, Pinto, Parmele, Shell, Strickland, Turner. Nays: None.)

SPECIAL EXCEPTION

- (A) **BOA-09-13: 4400 PENNYDALE DRIVE** Irma Boykin requests a Special Exception as authorized by Section 30-5-2.37(B) to allow a separation of 1,275 feet from one family care home (6 or less persons) to another family care home (6 or less persons) when 1,320 feet is required. Present Zoning-RS-9, BS-113 Cross Street-Chateau Drive. (GRANTED)

Rawls Howard stated that the applicant is proposing to locate a family care home 1,275 feet from an existing family care which is located at 2001 Jane Street. The minimum spacing separation requirement is 1,320 feet. It is 45 feet too close. The lot is located on the north side of Pennydale Drive south and east of Chateau Drive and is zoned RS-9 (Residential Single Family-9). The applicant is proposing to locate a family care home (6 or less persons) at 4400 Pennydale Drive. It is approximately 1,275 feet from an existing family care home, which is located at 2001 Jane Street. The homes are required to be separated by a minimum radius of ¼ mile, which is 1,320 linear feet. This location does not meet the minimum spacing requirement by 45 feet. The homes will be separated by public school property, large buffers, numerous houses and streets. The RS-9, Residential Single-Family District is primarily intended to accommodate moderate to high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-9 will typically be 4.0 units per acre or less.

Gregory Boykin, 1110 Virginia Place, Cary, NC, was sworn in and stated that there is a family care home on Jane Street which is actually over a quarter of a mile and the houses in the area would provide separation. In response to questions, he stated that there would be 4 to 6 children in the facility at any time, aged 13 to 18 and there is always 24 hour supervision.

There was no one speaking in opposition to the request.

In discussion, the Board members stated that the difference between this request and the request that was heard in December is that there are clearly buffers between the currently requested home and the closest home and also there is only a 45 foot encroachment into the subject property.

After a short discussion, Mr. Turner moved that the findings as submitted by staff be incorporated into the record by reference in regard to BOA-09-13, 4400 Pennydale Drive, and that the Zoning Enforcement Officer be overruled and the Special Exception granted as it is in harmony with the general purpose and intent of the ordinance and preserves its spirit, assures public safety and welfare and does substantial justice and the fact that it is only 45 feet short of the linear requirement of 1,320 feet with limited buffers between the two structures, seconded by Mr. Brewington. The Board voted 7-0 in favor of the motion to grant the Special Exception. (Ayes: Cross, Brewington, Pinto, Parmele, Shell, Turner, Strickland. Nays: None.)

OTHER BUSINESS

FAMILY CARE HOME STUDY

Rawls Howard stated that due to the case brought to the Board in December, staff did some research in similar cases and they are in the midst of doing a Family Care Home audit which has never been done. An updated report will be completed and submitted to the Board for their review at the next meeting.

TIME LIMITATIONS FOR REHEARING REQUESTS

After some discussion, it was determined that this matter would be heard at the June meeting.

ABSENCES

The absence of Brian Pearce was acknowledged.

ADJOURN:

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There being no further business before the Board, the meeting was adjourned at 3:04 p.m.

Respectfully submitted,

John Cross, Chair
Greensboro Board of Adjustment

JC/jd